

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 424

Case No. 83-7

March 12, 1984

(Rezoning in the 1100 blocks of 22nd and 23rd Streets, N.W.)

Pursuant to notice, a public hearing of the District of Columbia Zoning Commission was held on October 3, and December 12, 15, and 20, 1983. At those hearing sessions, the Zoning Commission considered an application from Theodore and James Pedas to amend the Zoning Map of the District of Columbia, pursuant to Section 9101 of the Zoning Regulations of the District of Columbia. The hearing was conducted in accordance with the provisions of Chapter 6 of the Rules of Practice and Procedure before the Zoning Commission.

FINDINGS OF FACT

1. The application, which was filed on May 18, 1983, requested a change of zoning from R-5-B to CR for lots 61, 813 and 868, and from R-5-D to CR for lots 832, 833, 852, 858, 58, and 861-863 all in Square 51. The application also requested C-2-C rezoning as an alternative to the requested CR.
2. In part, the applicants requested the rezoning in order to be permitted to use an existing five-story, vacant building for general office use. The applicants have no immediate development plans for the subject properties.
3. On June 20, 1983 at its regular monthly meeting, the Zoning Commission authorized the scheduling of a public hearing for the application. The Commission determined that it would not consider the CR rezoning option for public hearing. Considering the existing zoning pattern on the south side of M Street, the Commission believed that changing the zoning to CR would result in "spot zoning". The Commission was mindful that it is prohibited by law from creating "spot zoning." The Commission thus limited its consideration for a change from R-5-B and R-5-D to C-2-C, or to any intervening districts more restrictive than C-2-C.
4. The R-5-B District permits matter-of-right medium

density development of general residential uses including single-family dwellings, flats, and apartments to a maximum lot occupancy of sixty percent, a maximum floor area ratio (FAR) of 1.8 and a maximum height of sixty feet.

5. The R-5-D District permits matter-of-right high density development of general residential uses, including single-family dwellings, flats, and apartments, to a maximum height of ninety feet, a maximum FAR of 6.0 (5.0 for non-residential uses) and a maximum lot occupancy of seventy-five percent.
6. The C-2-C District permits matter-of-right high density development, including office, retail, housing, hotels and mixed-uses to a maximum height of ninety feet, a maximum FAR of 6.0, with non-residential uses limited to an FAR of 2.0, and a maximum lot occupancy of eighty percent for residential uses.
7. Lots 832, 833, 852, 858, 58, and 861-863 are located at 1118 - 22nd Street, N.W., comprise 11,858 square feet of land area in a rectangular-shaped configuration, and are improved with a vacant five-story building and rear parking lot. This property most recently was used as the Libyan Chancery.
8. The existing five-story building was constructed in 1955. The zoning at that time was First Commercial. The zoning was changed to R-5-D on the adoption of a comprehensive new zoning ordinance in 1958. The office use was continued on the premises until 1976, when the use and certificate of occupancy was changed to "Chancery" for the Libyan Arab Republic. In May, 1981, the United States Government expelled the Libyan diplomatic mission from the country, and the Department of State closed and sealed the subject premises. The building was unsealed nearly a year later, but it has been continuously vacant since May, 1981.
9. Lots 61, 813 and 868 are located at 1117-1123 - 23rd Street, N.W., comprise 7,596 square feet of land area in a rectangular-shaped configuration, and are used as an accessory parking lot.
10. The parking lot on the 23rd Street property was approved as a special exception by the Board of Zoning Adjustment (BZA) to serve as accessory parking for the expansion of the West End Circle Theatre. The BZA approved the accessory parking by Order No. 13641 dated February 3, 1982.
11. The applicants had previously filed an application for

a Zoning Map amendment from R-5-B to C-2-C, for the 23rd Street property for the stated purpose of making the parking matter-of-right. That application was withdrawn without public hearing (Z.C. Case No. 80-9). The immediate reason for the present map amendment application is to obtain zoning which will permit the existing building to again be devoted to general office use.

12. Square 51 is bounded by 22nd, 23rd, L and M Streets, and Hew Hampshire Avenue. There is a public alley that runs east-west connecting 22nd and 23rd Streets, and divides the square into northern and southern halves. There is also an interior public alley that runs north-south, but does not intersect any of the bounding streets.
13. The northern half of Square 51 comprises a large parking lot which is zoned C-2-C, and some vacant land which is zoned R-5-B and was recently occupied by six three and four-story row dwellings that were demolished.
14. The southern half of Square 51 comprises the subject properties, the West End Circle Theatre and the Le Jardin Restaurant, which are zoned C-2-C, and the ten-story Carriage House Condominium apartment house which is zoned R-5-D. The applicants also own the lot on which the theater and the restaurant are located.
15. The general area in which the subject sites are located is commonly known as the "West End." The West End is developed with hotels, office buildings, parking lots, garages, and apartment buildings, including the neighboring Gibson and Carriage House Condominiums. The West End is situated between Georgetown and Rock Creek Park to the west, Downtown to the east, the Dupont Circle area to the northeast, and the Foggy Bottom area to the south.
16. In 1974, the Zoning Commission rezoned the West End, as set forth in Z.C. Orders No. 108 and 109. This action was undertaken, in part, to revitalize the western edge of the Central Employment Area and to encourage mixed-use development. The hoped for result was an in-town, mixed-use/residential neighborhood which would retain the best of its existing features. Previously much of the West End area had been zoned C-M-2. The result of the mapping change was to shift the development pattern from mid-rise office buildings to a mixture of residential, office, hotel, retail, and other uses.
17. The result of the 1974 zoning action was a band of CR

zoning mapped on the north side of M Street, essentially between M, N, 21st, and 25th Streets, N.W., with a dogleg at the western end extending south across Pennsylvania Avenue near Rock Creek Park.

18. Along the south side of M Street from New Hampshire Avenue to Rock Creek Park a one-half block wide band of C-2-C zone was mapped. This District is essentially a high-density apartment house zone in which a limited amount of retail, office, and other uses are permitted. In addition to the section along M Street, there are smaller areas of C-2-C zoning on Pennsylvania Avenue and in Square 51.
19. In addition to the existing R-5-B zoning in Square 51, R-5-B was also mapped in the area to the west and southwest of Square 51 around clusters of existing townhouse-scale developments.
20. The applicant, through testimony presented at the public hearing, indicated that, by changing the use of the five-story building in 1976, it lost the vested right to general office use on the premises, i.e., as a continuing nonconforming use. After numerous attempts, continuing to the present, to lease the property for chancery use and various other permitted R-5-D uses, the applicants applied to the BZA for a use variance in 1982 to permit general office use. The applicants noted the large size and various physical constraints of the premises for permitted R-5-D uses. However, the BZA denied the application in Order No. 13764 dated September 1, 1982.
21. The architect for the applicants in this case, through testimony at the public hearing, identified alternative development options that would take advantage of full and partial development permitted under the requested C-2-C rezoning. The options included potential office, residential and mixed-use development schemes.
22. The applicants testified that their short-term development objectives in seeking the rezoning were to use the building at 1118 - 22nd Street as office space and to continue to use the property on 23rd Street as a parking lot. The applicants testified as to their long-range development plans, which would include the potential closing of some of the existing alleys and construction of a combination of office and residential uses. The applicants submitted general plans showing the kind of development that could happen as a result of the rezoning. The Commission finds that such plans are irrelevant to the decision to be made in this application. In a map amendment application, the Commission has no authority to require that the

applicant conform to such plans. If the rezoning is approved, the applicant may use and construct on the property in any manner that the Zoning Regulations permit.

23. The applicants' traffic engineer, by report and through testimony presented at the public hearing, concluded that the proposed rezoning would have no adverse impact on traffic in the area. The result of his study was based on the following three conditions:
 - a. The immediate effect of the requested rezoning;
 - b. Effect of maximum development as a matter-of-right under existing zoning; and
 - c. The effect of maximum development under the requested rezoning.

He further testified that any increase in traffic would either be off-set by the equivalent number of trips generated by the previous use or would be absorbed by the acceptable levels of street capacity available in the area.

24. The applicants' real estate witness testified as to the applicants' continuous but unsuccessful efforts to market the 22nd Street building for an R-5-D use. Testimony included a listing of parties contacted. The witness cited the time and expense involved in a BZA application for a variance as a factor diminishing the building's appeal to potential lessees under existing zoning. The witness stated that the economic feasibility of residential use of the subject properties, as set forth by the architect for the applicants, was inconsistent with conditions in the marketplace.
25. The D.C. Office of Planning, by memorandum dated September 23, 1983, and by testimony presented at the public hearing, recommended approval of the application. The Office of Planning believed that "On the basis of massing and compatibility of use alone, C-2-C zoning on the subject sites would appear to be compatible with neighboring massing and uses. And it would help to coordinate the scale and design of future development." The Office of Planning noted that the Proposed Generalized Land Use Map submitted by the Mayor to the Council of the District of Columbia indicated the West End area from N Street to Pennsylvania Avenue, as a mixture of high density residential use and medium density commercial use. The proposed rezoning would be consistent with these policies and objectives.

26. The D.C. Department of Transportation (DCDOT), by memorandum dated September 22, 1983, examined the applicants' alternative development schemes under the proposed C-2-C rezoning, in terms of the following areas of concern:
- a. The extent to which the proposed uses would create any dangerous or objectionable traffic conditions; and
 - b. The amount of additional traffic which the proposed uses would add to the street system.

The DCDOT determined that, in one development option, some increase in traffic volume near the subject properties would be generated but would be absorbed by the area street system with minimal impact. The other development options would generate negligible to minimal increase in the traffic volume.

27. The D.C. Department of Environmental Services, by memorandum received on August 31, 1983, indicated that the application will have a minimum impact on the water and sewer systems serving the area.
28. Advisory Neighborhood Commission - 2A, by resolution dated September 27, 1983, opposed the application. The concerns of ANC-2A are as follows:
- a. There is no benefit to the city because there is no commitment to specific development plans, increased housing, tax base, or jobs for city residents;
 - b. The residential uses under C-2-C zoning may be satisfied with hotels and inns, effectively resulting in increased commercial development without adding to the city's housing stock;
 - c. Granting of this application is likely to result in the filing of applications for the rezoning of nearby properties to C-2-C and C-3-C zones, and would encourage hotel development in the West End area, in lieu of the Convention Center area;
 - d. Development of the square for other than domiciliary uses will have adverse traffic impacts on the Carriage House Condominium because of the increased use of the alley and surrounding streets;
 - e. The applicants are not developers. Furthermore, the ANC is of the opinion that the resale of the land after rezoning will provide a windfall profit

benefiting an unspecified development which may not be in the interest of the neighborhood, consistent with the West End Plan, or of benefit to the City;

- f. The current application should be denied and the applicant should be directed to file a new application with the BZA or propose a specific development, preferably under a PUD approach; and
 - g. A more appropriate change of zoning would be to rezone the R-5-B portion to R-5-D, subject to construction of apartment, condominium or cooperative domiciliary uses.
29. The Board of Directors of the Carriage House Condominium, by testimony presented at the public hearing and by letter dated November 22, 1983, supported the application because the vacant five-story structure is an eye-sore and rezoning would facilitate the refurbishing of the building and improve the appearance near the Carriage House and the immediate neighborhood.
30. Two unit owners of the neighboring Gibson Condominium, by letters dated September 29 and 30, 1983, and by testimony from one presented at the public hearing, supported the application because it would enhance the neighborhood, protect investment, and hasten development in the area.
31. Philip J. Brown, who was a party in the case, by testimony presented at the public hearing, opposed the application. He indicated that the Zoning Commission action in 1974, which reduced the commercial FAR on nearby property he owned, was an example of a policy to discourage office uses in the West End and encourage residential uses. He stated that the development of housing in R-5-B zoned land had occurred in the area and that the R-5-B and C-2-C zone districts are compatible. He also indicated that the applicants and the owner of property on the northern half of the square could close the east-west alley and construct a large office building, and that housing and jobs have been lost since the adoption of the "West End plan." He stated that the applicant should seek relief with regard to the 22nd Street property from the BZA.
32. The Residential Action Coalition (RAC), which was a party in the case, by letter dated November 28, 1983 and by testimony presented at the public hearing, opposed the application. The RAC indicated that the proposal was contrary to the "West End plan." Further, it opposed the negative impact which it believed would

result from hotel and office construction. It opposed the increase in traffic which would be generated by this development.

33. Ruth L. Brown, who was a party in the case, by letters dated September 17 and November 21, 1983, through counsel, opposed the application because of the potential for reducing residential and encouraging commercial uses.
34. One person, by testimony presented at the public hearing, the Dupont Circle Citizens Association by letter dated September 22, 1983, and the Foggy Bottom Association by letter dated September 28, 1983, opposed the application because of anticipated traffic generation and diminishing residential uses.
35. To the east, northwest, and southwest of the 22nd Street property is property presently zoned C-2-C, permitting a ninety foot height and a 6.0 FAR. In addition, the property to the south permits a ninety foot height and a 6.0 FAR, limited to residential use. Rezoning the 22nd Street property to C-2-C would allow use of the existing building for the purpose for which it was built, and would create a consistent height and bulk pattern.
36. To the north, south, east, southeast, and northwest of the 23rd Street property is property presently zoned R-5-D and C-2-C, permitting a ninety foot height and 6.0 FAR. Rezoning the 23rd Street property to R-5-D would create a consistent height and bulk pattern, and would require that area to be devoted to the more limited uses permitted in R-5-D, as oppose to C-2-C.
37. The combination of rezoning to R-5-D and C-2-C contributes to and reinforces the overall mixed-use character of the West End area.
38. As to the concern that there is no benefit to the city because there is no specific development plan, the Commission finds to the contrary. The existing vacant five-story building has the potential of generating jobs and more taxes to the city if used, as opposed to remaining in its existing vacant condition. The Commission believes that the building is inappropriate for housing because it was originally constructed as a conforming structure in 1955 for general office use.
39. As to the concern that under C-2-C zoning a hotel or inn could be established and exceed the 2.0 FAR limit for non-residential uses, the Commission gave considerable attention to that issue when it amended the

Regulations regarding hotels in 1980 (Case No. 79-1, Order No. 314). The Commission determined that hotels and inns are both residential and non-residential in character. The Commission further determined that it is appropriate and reasonable to allocate the sleeping quarters and service areas of hotels and inns to the permitted residential FAR component of the commercial district, and to consider function rooms, exhibit space and commercial adjuncts as non-residential FAR.

40. As to the concern that approval of the application would encourage other property owners to seek commercial rezoning for hotel development outside of the HR Overlay District, the Commission is not persuaded. The Commission has considered this application and intends to consider any future applications on a case-by-case basis. The Commission notes that hotels can locate as a matter-of-right in any commercial district, most of which are outside of the HR District. The Commission further notes, however, that the greatest incentive to locate hotel development is in the HR District.
41. As to the concerns regarding adverse traffic impact, the Commission concurs with the findings of the DCDOT and the applicants' traffic expert that negligible to minimal traffic impact would be generated by C-2-C development. The opposition testimony on this issue was general and unsupported by specific evidence.
42. As to the concern that the applicants are not developers and would reap a windfall profit if the Commission approved the application and the applicants sold the property, the Commission is cognizant of that possibility. The Commission is mindful that for each change of zoning there is a benefit for someone or something. The Commission, however, is required to act on applications that are properly filed before it and in doing so, must make prudent and balanced decisions that are in the best interests of the District of Columbia as a whole.
43. As to the concern that the Commission should deny the application and refer the applicants to the BZA for a new filing or return to the Commission under a PUD filing, the Commission finds that concern to be unreasonable and unnecessary. The Commission notes that the BZA has already denied an application to use the five-story building for general office use in 1982. The instant map amendment application is appropriately and properly filed before the Commission and must be properly disposed of by the Commission.
44. As to the concern that the 23rd Street property be

rezoned from R-5-B to R-5-D, subject to development conditions, the Commission concurs, except for the requirement of development conditions. The Commission notes that it has no authority to impose development conditions in a map amendment application such as this.

45. As to the concerns that the housing stock would be reduced, the Commission finds that in its decision, it would improve the potential for an increase in the housing stock by limiting the 23rd Street properties to R-5-D zoning, which precludes hotels.
46. As to the concern that approving the application would increase the potential of large-scale C-2-C development if the northern half of Square 51 were joined in development with the southern half of Square 51, the Commission is mindful of that possibility.
47. As to the argument concerning the consistency of the proposed change with the "West End plan", the Commission finds that such "plan" was not a legally binding or adopted policy or plan by which the Zoning Commission must abide. The "plan" was a study prepared by various parts of the District Government which served, in large part, as the basis for zoning changes made in 1974. The Zoning Commission never adopted the "plan", nor did the District of Columbia Council make it part of any comprehensive plan.
48. The decision of the Zoning Commission in this application was referred to the National Capital Planning Commission (NCPD) under the terms of the District of Columbia Self Government and Governmental Reorganization Act. The NCPD reported that the proposed rezoning would not adversely affect the Federal Establishment and other Federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. Rezoning from R-5-B to R-5-D and from R-5-D to C-2-C as set forth herein is in accordance with the Zoning Act (Act of June 20, 1938, 52 Stat, 797) by furthering the general public welfare and serving to stabilize and improve the area.
2. Rezoning from R-5-B to R-5-D and from R-5-D to C-2-C as set forth herein will promote orderly use of the site in conformity with the entirety of the District of Columbia Zoning Plan as embodied in the Zoning Regulations and Map of the District of Columbia.
3. Rezoning from R-5-B to R-5-D and from R-5-D to C-2-C as

set forth herein will not have an adverse impact on the surrounding neighborhood.

4. The Commission takes note of the position of Advisory Neighborhood Commission - 2A, and in its decision has accorded to the ANC, the "great weight" to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission of the District of Columbia hereby orders APPROVAL of the following:

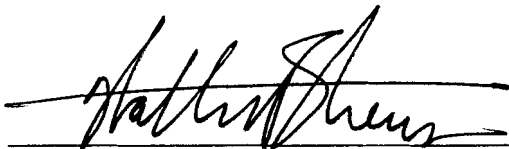
Change from R-5-B to R-5-D lots 61, 813, and 868 @ 1123 - 23rd Street, N.W. and from R-5-D to C-2-C lots 832, 833, 852, 858, 58, and 861-863 @ 1118 - 22nd Street, N.W. all in Square 51, as shown on the map attached hereto and made a part of this order.

Vote of the Zoning Commission at the public meeting held on February 13, 1984: 3-0 (John G. Parsons, Walter B. Lewis, and Lindsley Williams, to approve R-5-D and C-2-C - George M. White, not voting not having participated in the case and Maybelle T. Bennett, abstained).

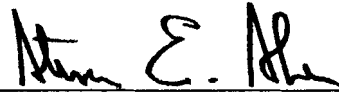
This order was adopted by the Zoning Commission at its public meeting held on March 12, 1984 by a vote of 4-0: (Lindsley Williams, John G. Parsons, Maybelle T. Bennett and Walter B. Lewis, to adopt as amended - George M. White, not voting not having participated in the case).

In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, this amendment to the Zoning Map is effective upon publication in this D.C. Register, specifically on

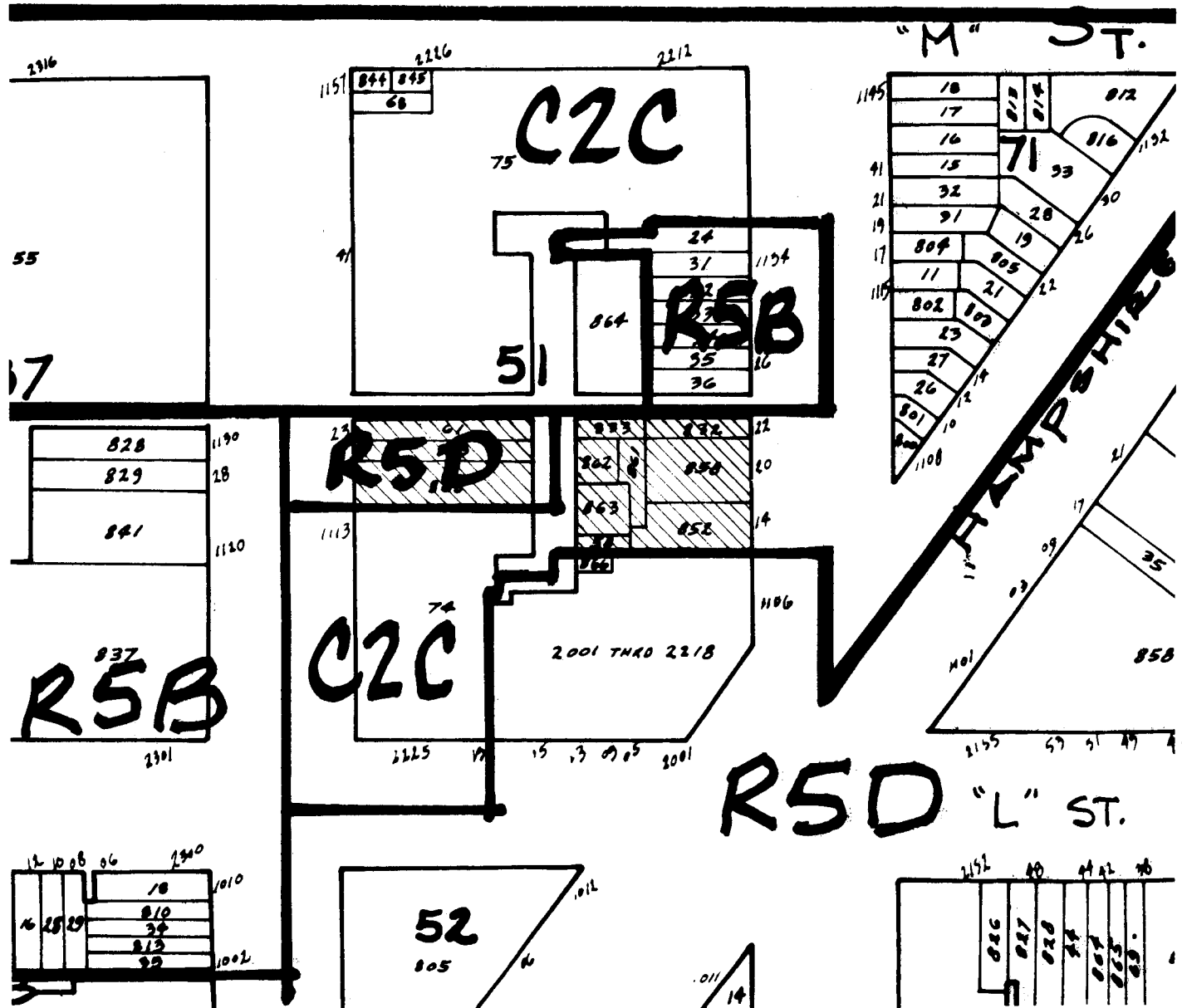
APR - 6 1984



WALTER B. LEWIS
Chairman
Zoning Commission



STEVEN E. SHER
Executive Director
Zoning Secretariat



SUBJECT PROPERTY